

# EXHIBIT

## Deposition of Jeffrey Hardin

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

 **COPY**

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF JEFFREY SCOTT HARDIN, taken  
pursuant to stipulation and agreement before Shannon  
M. Williams, Certified Court Reporter and  
Commissioner for the State of Alabama at Large, in  
the offices of City Hall, 601 12th Street, Phenix  
City, Alabama, on Wednesday, April 4, 2007,  
commencing at approximately 9:05 a.m. EST.

\* \* \* \* \*

APPEARANCES

FOR THE PLAINTIFF:

THOMAS A. WOODLEY  
Woodley & McGillivary  
1125 15th Street N.W.  
Suite 400  
Washington, D.C. 20005

FOR THE DEFENDANTS:

JAMES P. GRAHAM, JR.  
712 13th Street  
P.O. Box 3380  
Phenix City, Alabama 36868-3380

ALSO PRESENT:

David Davis  
H.H. Roberts  
Wallace Hunter

## 1 STIPULATIONS

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of JEFFREY SCOTT HARDIN is taken pursuant  
5 to the Federal Rules of Civil Procedure and that  
6 said deposition may be taken before Shannon M.  
7 Williams, Certified Court Reporter and Commissioner  
8 for the State of Alabama at Large, without the  
9 formality of a commission; that objections to  
10 questions other than objections as to the form of  
11 the questions need not be made at this time but may  
12 be reserved for a ruling at such time as the  
13 deposition may be offered in evidence or used for  
14 any other purpose as provided for by the Federal  
15 Rules of Civil Procedure.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that said deposition may be introduced at the  
19 trial of this case or used in any manner by either  
20 party hereto provided for by the Federal Rules of  
21 Civil Procedure.

22 \* \* \* \* \*

1 JEFFREY SCOTT HARDIN

2 The witness, having first been duly sworn  
3 or affirmed to speak the truth, the whole truth and  
4 nothing but the truth, testified as follows:

5 THE REPORTER: Usual stipulations?

6 MR. GRAHAM: We do want to read and sign.

7 EXAMINATION

8 BY MR. WOODLEY:

9 Q. Mr. Hardin, could you state your full name  
10 for the Record, if you would, please?

11 A. Jeffrey Scott Hardin.

12 Q. Mayor Hardin, my name is Tom Woodley, and  
13 I'm one of the attorneys representing the plaintiff,  
14 David Davis, in this lawsuit. And we are here this  
15 morning pursuant to a Notice of Deposition that we  
16 have served on you and the city and your attorneys.  
17 And I'm going to ask you some preliminary questions  
18 just to sort of set the stage for us this morning,  
19 and then we'll get into the substance of my  
20 questions and your answers.

21 Have you ever had your deposition taken before  
22 in another case?

23 A. Once before.

24 Q. Once before? What kind of a case was that?

25 A. It was -- actually, it was a suit against

1 the city. I think it had to do with a fireman.  
2 Jimmy, was it -- do you remember, was it Dennis  
3 Duty?

4 MR. GRAHAM: Was it where he didn't get his  
5 raise?

6 THE WITNESS: I think so. Whenever we had  
7 to go to federal court in Opelika.

8 MR. GRAHAM: That would have been in Dennis  
9 Duty and Randy Doster's cases.

10 Q. Thank you, sir. And, Mayor, are you  
11 generally familiar with the issues and the  
12 allegations in this particular lawsuit?

13 A. I've read the -- I guess the request for  
14 deposition, yes, sir.

15 Q. And have you had at least a brief  
16 opportunity to spend some time with the attorneys  
17 that are representing you and the city in this case?

18 A. Yes, sir.

19 Q. And do you have a general knowledge and  
20 understanding about the procedures we will be  
21 following this morning in your deposition?

22 A. Yes, sir.

23 Q. I just want to review those just to make  
24 certain on the record that we're on the same page  
25 about the procedures that we'll be following this

1 morning?

2 A. Okay.

3 Q. I'll be asking you a number of questions  
4 and, of course, we expect you to give full and  
5 truthful answers. You understand that?

6 A. Yes, sir.

7 Q. And you have to verbalize your answer  
8 because the reporter here can't take down nods of  
9 the head so you'll have to verbalize your  
10 responses.

11 A. Okay.

12 Q. You understand that?

13 A. Yes.

14 Q. If at any time you don't understand or hear  
15 one of my questions, let me know immediately and  
16 I'll be more than happy to repeat or rephrase that  
17 question.

18 A. Okay.

19 Q. Do you understand that?

20 A. Uh-huh.

21 Q. You'll have to wait until I finish my  
22 question before you begin your answer, again so the  
23 reporter will have a clear record of what we're  
24 talking about. Do you understand that?

25 A. Yes, sir.

1 Q. And this reporter will have then a chance  
2 to, after we finish your deposition, to put this in  
3 writing in a transcript form. And as your attorney,  
4 Mr. Graham, just indicated, you'll have a chance to  
5 review and read and sign that transcript. Do you  
6 understand that?

7 A. Yes, sir.

8 Q. And, of course, finally, you have been  
9 sworn to tell the truth under the penalty of  
10 perjury, so you understand that as well?

11 A. Yes, sir.

12 Q. Could you please tell us what your current  
13 position is with the City of Phenix City?

14 A. I serve as the mayor.

15 Q. How long have you held that position?

16 A. A little over two years.

17 Q. Was that your first elected term as mayor?

18 A. First as mayor, yes, sir.

19 Q. Did you hold a previous position with the  
20 city?

21 A. I have served as a city council member.

22 Q. How long were you a council member?

23 A. Three years.

24 Q. And before that, what was your occupation?

25 A. I owned my own business.

1 Q. And what's the nature of that business?

2 A. It's a wholesale and retail meat company,  
3 Phenix Food Service.

4 Q. And do you still have that business?

5 A. I do not.

6 Q. Did you sell that?

7 A. I am in the process of selling that. I  
8 have been inactive from the company for about two  
9 years, and then I have a five-year buyout.

10 Q. And how long is your current term as mayor?

11 A. It's a four-year term.

12 Q. And, basically, what are your duties and  
13 responsibilities as the mayor of Phenix City?

14 A. Basically, I act in ceremonial purposes,  
15 and then I oversee the meetings. I direct the  
16 meetings, two council meetings a month, on the first  
17 and third Tuesday of the month, and that's pretty  
18 much the stated duties of the mayor in Phenix City.

19 Q. Are you considered a member of the city  
20 council?

21 A. I am.

22 Q. Are you a voting member of the city  
23 council?

24 A. I am, yes, sir.

25 Q. And what is the total number of members on

1 the city council?

2 A. Including myself, it's five.

3 Q. Now, Mr. Mayor, we have prepared a binder  
4 of papers and exhibits just to facilitate and  
5 expedite the depositions over the next couple of  
6 days. So I want to give you a copy of these  
7 deposition exhibits because I'll be asking you some  
8 questions about these documents. And I have another  
9 full set of exhibits for your attorney, Mr. Graham.

10 And if you could open up that binder, Mayor  
11 Hardin, to Exhibit 8, this particular paper or  
12 document is at least portions of the city charter as  
13 I understand it. And if you could briefly just kind  
14 of flip through those pages. Is it your  
15 understanding as well that these are at least  
16 certain sections of the city charter or city code?

17 A. It is, yes, sir.

18 Q. If you would turn to section 2.02, which is  
19 four or five pages into this document.

20 A. Okay.

21 Q. And I should say, when you review these  
22 documents, take as much time that you feel  
23 comfortable to look at this before you respond to my  
24 question, because we're really in no hurry here.

25 A. Okay.

1 Q. So section 2.02 talks about the form of  
2 government. Is it accurate to say that this is a  
3 council/manager form of government?

4 A. It is, yes, sir.

5 Q. And what, in layman's language, does that  
6 mean to you as a council/manager form of government?

7 A. It means that the mayor and the city  
8 council act basically as a board of directors, and  
9 we set basically the direction and vision for the  
10 city. And then the city manager handles the  
11 day-to-day operations and basically acts on our  
12 vision for the city, and moves the city in that  
13 direction.

14 Q. Okay. Then if you would move on to section  
15 3.06 of the city charter.

16 A. Okay.

17 Q. It indicates there in the beginning --

18 MR. WOODLEY: Could we go off the record  
19 just for one second?

20 MR. GRAHAM: Sure.

21 (Discussion held off the record.)

22 MR. WOODLEY: Okay. We can go back on the  
23 record.

24 Q. Mayor Hardin, I think we were on section  
25 3.06 of the city charter where it indicates that the

1 mayor shall preside over the meetings of the city  
2 council. Is that accurate?

3 A. Yes, sir.

4 Q. Then it indicates at the end of that first  
5 sentence at section 3.06 that the mayor does not  
6 have any regular administrative duties?

7 A. Correct.

8 Q. That is correct?

9 A. Yes, sir.

10 Q. Then in section 3.07 of the city charter  
11 where it discusses powers, it indicates that all  
12 matters of policy shall be vested in the city  
13 council; is that correct?

14 A. Yes, sir.

15 Q. Then you'll see under subsection (a) of  
16 3.07, it indicates that the city council shall have  
17 the authority or power to appoint and remove the  
18 city manager. Is that accurate?

19 A. Yes.

20 Q. Are all votes of the city council, such as  
21 the possible appointment or removal of a city  
22 manager, done by a majority vote?

23 A. Yes, sir.

24 Q. And is that reflected in the city charter  
25 or city code as well?

1 A. It is.

2 Q. Then if you would move on to section 4.01  
3 of the city code where it talks about authority and  
4 duties of the city manager. In the next section,  
5 4.02, it indicates that the city manager shall be  
6 the head of the administrative branch of the city  
7 government and shall have such responsibilities as  
8 enforcing all laws and ordinances. Do you see where  
9 it says that?

10 A. Yes, sir.

11 Q. And is that correct as well?

12 A. That is correct.

13 Q. And it indicates in section 4.02,  
14 subparagraph (3), that the city manager will  
15 exercise supervision over the officers and employees  
16 of the city. Is that a correct statement?

17 A. That's correct, yes, sir.

18 Q. Then if you would move on to section 9.01  
19 in the city code.

20 A. Okay.

21 Q. As I understand this section and the  
22 following paragraphs, it indicates that the city  
23 manager has the ultimate responsibility or authority  
24 to remove any city officers or city employees. Is  
25 that a correct statement?

1 A. That is correct.

2 Q. As I understand it, then, basically the  
3 city manager would have the final authority, the  
4 final say, as to whether or not any city employee  
5 would be discharged or removed from his or her  
6 position; is that correct?

7 A. That's the way I understand it, yes, sir.

8 Q. So you're not the final decision maker as  
9 far as removing employees of the city?

10 A. No, sir.

11 Q. All right. Let's move on to another  
12 subject matter area. Mr. Mayor, were you aware that  
13 the Phenix City firefighters, at least at some point  
14 in time, had formed or organized a local labor  
15 organization?

16 A. Yes, sir.

17 Q. And when were you generally first aware of  
18 that?

19 A. Probably when I ran for office the first  
20 time. That was back in probably '98, somewhere  
21 around that time. And I understood it to be an  
22 association. I don't know if I really understood it  
23 to be a labor union, but I understood it to be an  
24 association.

25 Q. An association of the firefighters?

1 A. Correct.

2 Q. When you say you first ran for office, was  
3 there a time where you ran for office as mayor and  
4 you were unsuccessful?

5 A. I'm sorry. Before I ran for my first term  
6 as city council member, that was during the time  
7 that I heard about the association.

8 Q. And were you aware at some point in time  
9 that the plaintiff in this lawsuit, David Davis,  
10 seated at my right, became the president of the  
11 firefighters local labor association?

12 A. I had heard that, yes, sir.

13 Q. Can you remember when you first heard that  
14 approximately?

15 A. I don't know. That would have been during  
16 my term as mayor that I heard that.

17 Q. So within the last two years?

18 A. Yes, sir.

19 Q. And how long have you known David Davis?

20 A. Probably about two -- I don't remember if I  
21 met him during my first term. I don't know if I met  
22 him or not. I guess I really knew who he was  
23 probably during my -- starting my term or actually  
24 when I was running for office for mayor.

25 Q. And since you have known Mr. Davis, would

1 it be fair and accurate to say that you have had a  
2 fairly good relationship or working relationship  
3 with Mr. Davis?

4 A. Well, my -- I don't have a working  
5 relationship with people -- you know, my job here is  
6 one that I am very removed from the people that work  
7 for the city and -- you know, that's basically done  
8 by the charter. So my dealings with employees here  
9 are seeing them and saying, hey, how you doing, you  
10 know, everything going well kind of deal. So it's  
11 not -- we don't really have a relationship. It's  
12 more of a hey, how you doing kind of thing. So  
13 there's not a relationship between myself and the  
14 employees. And I don't see a lot of them very  
15 often.

16 Q. Okay. Mr. Mayor, when you ran for the  
17 position that you currently hold of mayor, did you  
18 ask for the support, the political support, of the  
19 firefighters and their labor association?

20 A. I did not.

21 Q. You did not? Do you know whether or not  
22 they furnished political support to you when you ran  
23 as mayor?

24 A. They did.

25 Q. And did you appreciate that?

1 A. I sure did, yes, sir.

2 Q. And were they helpful and constructive in  
3 you being elected?

4 A. All help is good when you're running for  
5 office.

6 Q. That makes sense.

7 A. If you've got people out there working for  
8 you, it's a benefit to you.

9 Q. I understand. And also when you were  
10 campaigning to become the mayor of Phenix City, did  
11 you have occasion to meet with the firefighters and  
12 perhaps their leader of their labor association  
13 during the campaign?

14 A. I did.

15 Q. And did you go out to a union hall or  
16 restaurant and meet with them?

17 A. I was invited to go to, if I'm not  
18 mistaken, two gatherings at a restaurant, a local  
19 restaurant. I think during my campaign was two  
20 different times that I attended. I was trying to  
21 remember that the other day when we were discussing  
22 this.

23 Q. What period of time would that have been  
24 before the election when you were meeting with the  
25 firefighters association?

1           A.   Probably within six months of the election,  
2           some time like that. Typically, elections around  
3           here require about a year, ten to twelve months of  
4           campaigning for mayor.

5           Q.   So what year are we talking about?

6           A.   We're talking about -- I think the election  
7           was in 2004, if I'm not mistaken. Does that sound  
8           right, 2004?

9           Q.   Okay.

10          A.   So that would have been, you know,  
11          approximately during that year --

12          Q.   Okay.

13          A.   -- because election was in September.

14          Q.   And on those two occasions when you were  
15          campaigning for mayor and when you met with the  
16          firefighters and their labor association, do you  
17          remember basically what issues were discussed or  
18          what concerns the firefighters might have had at the  
19          time?

20          A.   I don't really remember specific concerns.  
21          I know there was a lot of questions as to, you  
22          know -- I think that there were -- if I'm not  
23          mistaken, I think there was another person that was  
24          running there, or maybe two more people that were  
25          running for office, and there were questions to us

1 basically what our platform was, what our agenda  
2 was, and basically what kind of people we were. So  
3 just trying to feel us out as candidates.

4 Q. But did they mention to you issues related  
5 to their employment, the fire department's  
6 operations or policies?

7 A. I know that -- I remember there being some  
8 complaints. I don't remember specifics, but I know  
9 that there was some talk from the people running the  
10 meeting that we don't want to get into all this; you  
11 know, we want to talk to the candidates and let them  
12 answer questions. So there was -- I guess there was  
13 a couple people that started complaining. There  
14 were people there that said, you know, this is not  
15 what this meeting is for kind of deal, if I'm not  
16 mistaken. So I don't really remember any specifics,  
17 but I know that there were some rumblings in the  
18 room about some things that were not going  
19 specifically the way they wanted them to go.

20 Q. Do you remember any concerns being  
21 expressed in those two meetings when you were  
22 campaigning for mayor that the firefighters were  
23 perhaps troubled by staffing issues or equipment in  
24 the fire department or issues like that? Do you  
25 remember anything that comes to mind?

1           A. I guess what I remember mostly is really  
2 personalities being talked about, that there were --  
3 this person didn't like this person more so than  
4 anything about staffing and equipment.

5           Q. Okay. Do you remember if Mr. Davis, the  
6 plaintiff in this case, attended those two meetings  
7 when you were campaigning?

8           A. I'm pretty sure -- I know he was at one. I  
9 don't remember the other one. He could have been at  
10 both of them, yes, sir.

11          Q. Switching gears, after the time that you  
12 were elected and became mayor, did you have occasion  
13 to meet with the firefighters labor association and  
14 their leaders and members?

15          A. I went to -- I was invited to a retirement  
16 party for one of the firemen and -- as a matter of  
17 fact, it's a guy I went to high school with. And I  
18 went to that meeting. That's the only meeting or  
19 gathering that I can remember attending after  
20 getting elected to office.

21          Q. Okay. And during your term as mayor of the  
22 city, have you had any discussions with any  
23 firefighters about issues concerning the fire  
24 department, whether it might be staffing or swap  
25 time or trading of time, any concerns that the

1 firefighters may have had?

2 A. Sure. I've had some calls. There was a  
3 movement on swap time, and I got a call -- or I  
4 don't know if it was a call or I ran into somebody  
5 that said something about that; that said that that  
6 was not a good thing. And then, actually, someone  
7 from Columbus called me, from the Columbus Fire  
8 Department, and I guess he had heard some complaints  
9 and called me and -- because he lives in Phenix  
10 City -- and said that he didn't think it was a good  
11 idea to do away with swap time.

12 Q. Okay. But I wanted to focus on the  
13 firefighters that have been employed here in Phenix  
14 City municipality. Have you had any input or  
15 discussions with any of those firefighters since the  
16 time you've been mayor about swap time or any  
17 policies or issues that involve a fire department?

18 A. I had a conversation, and I don't -- I  
19 don't remember who it was with, but I remember there  
20 was a conversation to complain about the swap time.  
21 They didn't like the fact of swap time.

22 Q. And what about other issues? Obviously,  
23 there are many issues in the fire department about  
24 public safety and the delivery of fire and rescue  
25 services. The last two years since you have been

1 mayor, have you had a chance to speak with some of  
2 the firefighters about those issues?

3 A. I have -- you know, as far as any  
4 day-to-day things, the only thing that I was  
5 involved -- we had a interim city manager here when  
6 I first got elected, and there were some issues  
7 going on within the fire department. And he was  
8 meeting one day with the fire chief -- the interim  
9 city manager -- and asked me to sit down and talk  
10 with the fire chief. And my comments were to him  
11 that, you know, this is not my position to sit down  
12 and talk to the fire chief. And, basically, I just  
13 asked the fire chief, I said, you have had a lot  
14 of -- by virtue of us hearing complaints, typically,  
15 you pick up the paper and you read letters to the  
16 editor or you read, you know, where someone is --  
17 you know, the local paper is doing an  
18 investigation. You kind of hear rumblings that  
19 things may not be going exactly right.

20 And my question to the fire chief was, you  
21 know, all I want to know is do you understand that  
22 there are some issues within your fire department  
23 and do you have a plan to take care of those  
24 things? And that was the only thing I wanted to  
25 know, because that -- you know, as far as my